

**In re: JACK STEPP AND WILLIAM REINHART.  
HPA Docket No. 94-0014.  
Order Lifting Stay filed April 26, 2000.**

Sharlene A. Deskins, for Complainant.  
Respondents, Pro se.  
*Order issued by William G. Jensen, Judicial Officer.*

On May 6, 1998, I issued a Decision and Order: (1) concluding that Respondent Jack Stepp violated section 5(2)(B) of the Horse Protection Act of 1970, as amended (15 U.S.C. § 1824(2)(B)), and that Respondent William Reinhart violated section 5(2)(D) of the Horse Protection Act of 1970, as amended (15 U.S.C. § 1824(2)(D)); (2) assessing Jack Stepp and William Reinhart [hereinafter Respondents] each a \$2,000 civil penalty; and (3) disqualifying each Respondent from showing, exhibiting, or entering any horse, directly or indirectly through any agent, employee, or other device, and from judging, managing, or otherwise participating in any horse show, horse exhibition, horse sale, or horse auction, for 1 year. *In re Jack Stepp*, 57 Agric. Dec. 297 (1998). On May 27, 1998, Respondents filed a Petition for Reconsideration, which I denied based on my finding that Respondents' Petition for Reconsideration was not timely filed. *In re Jack Stepp*, 57 Agric. Dec. 323 (1998) (Order Denying Pet. for Recons.).

On June 30, 1998, Respondents requested a stay of the order in *In re Jack Stepp*, 57 Agric. Dec. 297 (1998), pending the outcome of proceedings for judicial review, and on July 1, 1998, I granted Respondents' request for a stay. *In re Jack Stepp*, 58 Agric. Dec. 397 (1998) (Stay Order).

Respondents filed an appeal with the United States Court of Appeals for the Sixth Circuit, which affirmed the May 6, 1998, Decision and Order. *Reinhart v. United States Dep't of Agric.*, 188 F.3d 508 (Table), 1999 WL 646138 (6<sup>th</sup> Cir. 1999) (not to be cited as precedent under 6<sup>th</sup> Circuit Rule 206).

On March 23, 2000, the Acting Administrator, Animal and Plant Health Inspection Service, United States Department of Agriculture [hereinafter Complainant], filed a Motion to Lift Stay; on April 18, 2000, Respondents filed a brief In Opposition to Motion to Lift Stay [hereinafter Reply to Motion to Lift Stay]; and on April 19, 2000, the Hearing Clerk transmitted the record of the proceeding to the Judicial Officer for a ruling on Complainant's Motion to Lift Stay.

Respondents contend the Hearing Clerk mailed Complainant's Motion to Lift Stay to Respondents on March 27, 2000, and under section 1.147(c)(2) of the Rules of Practice Governing Formal Adjudicatory Proceedings Instituted by the Secretary Under Various Statutes [hereinafter the Rules of Practice] (7 C.F.R. § 1.147(c)(2)), the Hearing Clerk served Respondents with Complainant's Motion to Lift Stay on March 27, 2000 (Letter from William J. Reinhart to Office of the Hearing Clerk, dated April 13, 2000; Reply to Motion to Lift Stay at 2). Section 1.143(d) of the

Rules of Practice provides that a response to a written motion must be filed within 20 days after service of the motion, as follows:

**§ 1.143 Motions and requests.**

. . . .

(d) *Response to motions and requests.* Within 20 days after service of any written motion or request, or within such shorter or longer period as may be fixed by the Judge or the Judicial Officer, an opposing party may file a response to the motion or request. The other party shall have no right to reply to the response; however, the Judge or the Judicial Officer, in their discretion, may order that a reply be filed.

7 C.F.R. § 1.143(d).

Respondents filed Respondents' Reply to Motion to Lift Stay 22 days after the Hearing Clerk served Complainant's Motion to Lift Stay on Respondents. Respondents' Reply to Motion to Lift Stay is not timely filed and may not be considered.

Moreover, even if Respondents' Reply to Motion to Lift Stay had been timely filed, I would grant Complainant's Motion to Lift Stay because I issued the Stay Order in this proceeding pending the outcome of proceedings for judicial review, proceedings for judicial review are concluded, and Respondents raise no meritorious basis for my denying Complainant's Motion to Lift Stay.

Respondents contend that: (1) the administrative hearing was unfair; (2) the administrative law judge's finding "was not supported by evidence in the record"; (3) the "tribunal was unfair, not unbiased and detached"; (4) "[t]he method by which the horse [in question] was determined to be sore has been held illegal by the highest Federal Appellate Court that has considered the issue"; and (5) the Horse Protection Act of 1970, as amended (15 U.S.C. §§ 1821-1831), "is an unconstitutional exercise of power by the U.S. Congress" (Reply to Motion to Lift Stay at 31). Respondents state that, in their appeal to the United States Court of Appeals for the Sixth Circuit, they only challenged the evidentiary findings in the May 6, 1998, Decision and Order, and that the opinion of the United States Court of Appeals for the Sixth Circuit in *Reinhart v. United States Dep't of Agric.*, *supra*, "does not satisfy the requirements for a full review as required when a constitutional challenge is raised" (Reply to Motion to Lift Stay at 32). Respondents request that I dismiss the proceeding and refer the proceeding to the "Federal District Court in Winchester, Tennessee" (Reply to Motion to Lift Stay at 32-33).

I disagree with Respondents' contention that the proceeding should be referred to the "Federal District Court in Winchester, Tennessee." I have no authority under

the Rules of Practice to transfer a case to a district court of the United States.<sup>1</sup> Further, the United States District Court for the Eastern District of Tennessee has no jurisdiction to review the May 6, 1998, Decision and Order issued under the Horse Protection Act of 1970, as amended (15 U.S.C. §§ 1821-1831) [hereinafter the Horse Protection Act]. Rather, section 6(b)(2) and (c) of the Horse Protection Act provides for judicial review of civil penalties assessed and disqualifications imposed under the Horse Protection Act, as follows:

**§ 1825. Violations and penalties**

. . . .

**(b) Civil penalties; review and enforcement**

. . . .

(2) Any person against whom a violation is found and a civil penalty assessed under [15 U.S.C. § 1825(b)(1)] . . . may obtain review in the court of appeals of the United States for the circuit in which such person resides or has his place of business or in the United States Court of Appeals for the District of Columbia Circuit by filing a notice of appeal in such court within 30 days from the date of such order and by simultaneously sending a copy of such notice by certified mail to the Secretary. The Secretary shall promptly file in such court a certified copy of the record upon which such violation was found and such penalty assessed, as provided in section 2112 of title 28. The findings of the Secretary shall be set aside if found to be unsupported by substantial evidence.

. . . .

**(c) Disqualification of offenders; orders; civil penalties applicable; enforcement procedures**

In addition to any . . . civil penalty authorized under this section, any person . . . who paid a civil penalty assessed under [15 U.S.C. § 1825(b)] . . . or is subject to a final order under [15 U.S.C. § 1825(b)] assessing a

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<sup>1</sup>*In re Nkiambi Jean Lema*, 58 Agric. Dec. 302, 305 (1999) (Order Denying Pet. for Recons. and Mot. to Transfer Venue). *Cf. In re Stinson Lumber Co.*, 56 Agric. Dec. 480, 492 (1997) (stating the Chief Administrative Law Judge does not have authority to transfer a case to a district court of the United States under the Rules of Practice Governing Adjudication of Sourcing Area Applications and Formal Review of Sourcing Areas Pursuant to the Forest Resources Conservation and Shortage Relief Act of 1990).

civil penalty for any violation of any provision of this chapter or any regulation issued under this chapter may be disqualified by order of the Secretary, after notice and an opportunity for a hearing before the Secretary, from showing or exhibiting any horse, judging or managing any horse show, horse exhibition, or horse sale or auction for a period of not less than one year for the first violation and not less than five years for any subsequent violation. . . . The provisions of [15 U.S.C. § 1825(b)] . . . respecting the . . . review . . . of a civil penalty apply with respect to civil penalties under this subsection.

15 U.S.C. § 1825(b)(2), (c).

Moreover, I disagree with Respondents' contention that proceedings for judicial review are not concluded. Respondents' failure to raise issues before the United States Court of Appeals for the Sixth Circuit is not a basis for finding that proceedings for judicial review have not been concluded. Respondents appealed this proceeding to the United States Court of Appeals for the Sixth Circuit, which affirmed the May 6, 1998, Decision and Order. *Reinhart v. United States Dep't of Agric.*, *supra*. The time for filing a petition for a writ of certiorari with the Supreme Court of the United States has expired.

Therefore, Complainant's Motion to Lift Stay Order is granted; the Stay Order issued on July 1, 1998, *In re Jack Stepp*, 58 Agric. Dec. 397 (1998) (Stay Order), is lifted; and the Order issued in *In re Jack Stepp*, 57 Agric. Dec. 297 (1998), is effective, as follows:

#### **Order**

1. Respondent William Reinhart is assessed a \$2,000 civil penalty. The civil penalty shall be paid by a certified check or money order, made payable to the "Treasurer of the United States," and sent to:

Sharlene A. Deskins  
United States Department of Agriculture  
Office of the General Counsel  
Marketing Division  
1400 Independence Avenue, SW  
Room 2014-South Building  
Washington, DC 20250-1417

Respondent William Reinhart's payment of the civil penalty shall be forwarded to, and received by, Ms. Deskins within 60 days after service of this Order on Respondent William Reinhart. Respondent William Reinhart shall indicate on the certified check or money order that payment is in reference to HPA Docket No. 94-

0014.

2. Respondent Jack Stepp is assessed a \$2,000 civil penalty. The civil penalty shall be paid by a certified check or money order, made payable to the "Treasurer of the United States," and sent to:

Sharlene A. Deskins  
United States Department of Agriculture  
Office of the General Counsel  
Marketing Division  
1400 Independence Avenue, SW  
Room 2014-South Building  
Washington, DC 20250-1417

Respondent Jack Stepp's payment of the civil penalty shall be forwarded to, and received by, Ms. Deskins within 60 days after service of this Order on Respondent Jack Stepp. Respondent Jack Stepp shall indicate on the certified check or money order that payment is in reference to HPA Docket No. 94-0014.

3. Respondent William Reinhart is disqualified for 1 year from showing, exhibiting, or entering any horse, directly or indirectly through any agent, employee, or other device, and from judging, managing, or otherwise participating in any horse show, horse exhibition, horse sale, or horse auction, and until Respondent William Reinhart has paid the civil penalty assessed in this Order. When Respondent William Reinhart demonstrates to the Animal and Plant Health Inspection Service that he has been disqualified for 1 year as provided in this Order and paid the civil penalty assessed in this Order, a supplemental order will be issued in this proceeding, upon motion of Complainant, terminating the disqualification of Respondent William Reinhart imposed by this Order.

The disqualification of Respondent William Reinhart shall become effective on the 60<sup>th</sup> day after service of this Order on Respondent William Reinhart.

4. Respondent Jack Stepp is disqualified for 1 year from showing, exhibiting, or entering any horse, directly or indirectly through any agent, employee, or other device, and from judging, managing, or otherwise participating in any horse show, horse exhibition, horse sale, or horse auction, and until Respondent Jack Stepp has paid the civil penalty assessed in this Order. When Respondent Jack Stepp demonstrates to the Animal and Plant Health Inspection Service that he has been disqualified for 1 year as provided in this Order and paid the civil penalty assessed in this Order, a supplemental order will be issued in this proceeding, upon motion of Complainant, terminating the disqualification of Respondent Jack Stepp imposed by this Order.

The disqualification of Respondent Jack Stepp shall become effective on the 60<sup>th</sup> day after service of this Order on Respondent Jack Stepp.

